

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VISIBLE SYSTEMS CORPORATION,

Plaintiff

v.

UNISYS CORPORATION,

Defendant

Civil Action No. 04-CV-11610-RGS

**DEFENDANT'S COMMENT ON TRIAL TIME-LIMIT ORDER,
AND OPPOSITION TO PLAINTIFF'S REQUEST TO MODIFY ORDER**

In its order of May 9, 2007, the Court directed that the direct and cross-examination of witnesses by both sides in this case should not take more than 18 hours—that is, 9 hours per side. In a draft motion presented for discussion but apparently not yet filed,¹ plaintiff VSC now requests 15 hours for direct examination of its witnesses alone.

Unisys opposes this request. VSC does not address the question of time for Unisys's direct examination of its witnesses, but fairness and Local Rule 43.1 would require, under VSC's proposed scenario, that Unisys also be given 15 hours.² Nor does VSC address the question of time for cross-examination, but estimating conservatively that the parties could complete their cross-examination in half the time allowed for direct, this would represent a total of 15 more hours, for a grand total of 45 hours. With jury selection and opening and closing statements, the trial would be scheduled to extend for as long as three weeks, even before deliberations.

¹ The Court's May 9 order gave the parties 10 days within which to comment on the proposed time limits. Unisys is therefore filing this comment and response even though it has not yet received notice that VSC has actually filed its motion, either in the form presented or any revised form.

² See Local Rule 43.1(A)(1) (Time allowed for trial "shall be allocated equally between opposing parties... unless otherwise ordered for good cause.").

Unisys's view is that this would be an unreasonable and unwarranted commitment of the parties' and the Court's resources—and of a jury's time—in this case. VSC's description of the anticipated testimony of its fourteen proposed witnesses also suggests an overly broad view of the material and disputed issues to be tried and the relevant and admissible evidence on those issues. Unisys anticipates that questions concerning the scope of the evidence—for example, the admissibility and appropriate scope of expert testimony, and the admissibility of evidence on VSC's claim for damages—will be addressed on motions *in limine* to be filed in accordance with the schedule set by the Court.

Assuming that the Court shares the positions to be set forth in those motions, and that the parties are able to work cooperatively to streamline the presentation of evidence, then Unisys's best current estimate is that the direct and cross-examination of both sides' witnesses could likely be accomplished in between 18 and 28 hours (that is, between four and a half and seven trial days). On the other hand, in the event the Court were to accept what Unisys understands to be plaintiff's position as to the scope of the issues and evidence, then Unisys might require additional time to respond.

In sum, then, Unisys opposes VSC's present request as unreasonable and unwarranted. Unisys believes that the presumptive time limit ordered by the Court may be workable, but suggests that an additional 10 hours (5 hours per side) be added to the scheduled limit. Unisys would also reserve the right to seek to revisit the question of time limits if appropriate, consistent with the standards set forth in Local Rule 43.1, during the final lead-up to trial, and/or during the trial itself.

Defendant,
UNISYS CORPORATION,
By Its Attorneys,

____/s/ William L. Boesch_____
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Dated: May 23, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document is being filed through the ECF system, and that I am therefore relying on the system to complete service by sending copies of the filing electronically to the necessary counsel, who are registered participants.

____/s/ William L. Boesch_____

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